

SENATE BILL 692

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2004 Regular Session
4r1547
CF 4r1485

By: **Senator Gladden**

Introduced and read first time: February 6, 2004

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Homeowners Associations - Recorded Covenants or Restrictions - Deletion**
3 **of Ownership Restrictions Based on Race or Religion**

4 FOR the purpose of authorizing a homeowners association to delete a recorded
5 covenant or restriction that restricts ownership of property based on race or
6 religious belief if a certain percentage of owners agree to the deletion or as
7 provided in certain deeds or declarations under certain circumstances; requiring
8 the governing body of a homeowners association to record with a clerk of the
9 court a certain amendment to certain deeds and other declarations of certain
10 property stating that a certain percentage of lot owners have agreed to the
11 deletion of a certain recorded covenant or restriction under certain
12 circumstances; specifying that certain provisions apply to covenants and
13 restrictions even if the covenant or restriction is part of a uniform general
14 scheme or plan of development; and generally relating to recorded covenants or
15 restrictions of a homeowners association that restrict ownership on the basis of
16 race or religious belief.

17 BY adding to
18 Article - Real Property
19 Section 11B-113.1
20 Annotated Code of Maryland
21 (2003 Replacement Volume and 2003 Supplement)

22 Preamble

23 WHEREAS, There exists in Maryland property burdened by restrictive
24 covenants based on race or religious belief that run with the land; and

25 WHEREAS, The Supreme Court in *Shelley v. Kraemer*, 334 U.S. 1 (1948), held
26 that judicial enforcement of a restrictive covenant based on race would constitute
27 state action, and therefore would violate the Fourteenth Amendment to the U.S.
28 Constitution; and

1 WHEREAS, The federal Fair Housing Act prohibits discrimination in the sale,
2 rental, and financing of dwellings based on race, religion, sex, handicap, familial
3 status, or national origin; and

4 WHEREAS, Under common law, unless the covenants or other restrictions
5 expressly provide to the contrary, covenants that run with the land may only be
6 removed by a unanimous vote of the land owners of each parcel of land burdened or
7 benefitted by the covenant or other restrictions; and

8 WHEREAS, In order to facilitate the removal of restrictive covenants based on
9 race or religious belief, a change in common law regarding the removal or alteration
10 of such covenants would be beneficial; now, therefore,

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article - Real Property**

14 11B-113.1.

15 (A) THIS SECTION APPLIES TO ANY RECORDED COVENANT OR RESTRICTION
16 THAT RESTRICTS OWNERSHIP BASED ON RACE OR RELIGIOUS BELIEF, INCLUDING A
17 COVENANT OR RESTRICTION THAT IS PART OF A UNIFORM GENERAL SCHEME OR
18 PLAN OF DEVELOPMENT.

19 (B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A
20 HOMEOWNERS ASSOCIATION MAY DELETE A RECORDED COVENANT OR
21 RESTRICTION THAT RESTRICTS OWNERSHIP BASED ON RACE OR RELIGIOUS BELIEF
22 FROM THE DEEDS OR OTHER DECLARATIONS OF PROPERTY IN THE DEVELOPMENT
23 IF AT LEAST 85% OF THE LOT OWNERS IN THE DEVELOPMENT AGREE TO THE
24 DELETION OF THE RECORDED COVENANT OR RESTRICTION FROM THE DEEDS OR
25 OTHER DECLARATIONS.

26 (C) IF THE DEEDS OR OTHER DECLARATIONS OF PROPERTY IN THE
27 DEVELOPMENT EXPRESSLY PROVIDE FOR A METHOD OF AMENDMENT OR DELETION
28 OF A RECORDED COVENANT OR RESTRICTION, A RECORDED COVENANT OR
29 RESTRICTION THAT RESTRICTS OWNERSHIP BASED ON RACE OR RELIGIOUS BELIEF
30 MAY BE DELETED AS PROVIDED FOR IN THE DEEDS OR DECLARATIONS OR IN
31 ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

32 (D) AFTER THE LOT OWNERS IN THE DEVELOPMENT AGREE TO THE
33 DELETION OF A RECORDED COVENANT OR RESTRICTION THAT RESTRICTS
34 OWNERSHIP BASED ON RACE OR RELIGIOUS BELIEF AS PROVIDED IN SUBSECTION (A)
35 OF THIS SECTION, THE GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION
36 SHALL RECORD WITH THE CLERK OF THE COURT IN THE JURISDICTION WHERE THE
37 DEVELOPMENT IS LOCATED AN AMENDMENT TO THE DEEDS OR OTHER
38 DECLARATIONS THAT INCLUDE THE RECORDED COVENANT OR RESTRICTION,
39 EXECUTED BY AT LEAST 85% OF THE LOT OWNERS IN THE DEVELOPMENT, THAT

1 PROVIDES FOR THE DELETION OF THE RECORDED COVENANT OR RESTRICTION
2 FROM THE DEEDS OR DECLARATIONS OF THE PROPERTY IN THE DEVELOPMENT.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2004.